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A Case for U.S. Soil

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Introduction:

Wire cages; outdoor enclosures; exposure to rodents, insects, and all types of weather conditions; deprived of food, water, and personal items. This is not the description of a third world country setting, it is Guantanamo Bay. In retaliation of the horrendous September 11 attacks, the Bush Administration opened Guantanamo Bay as a way to hold prisoners of war who were suspected of taking part or planning the attacks in New York, Washington, DC, and Pennsylvania. At first, this was a perfectly legal and acceptable course of action by the U.S. Government. However, in a Supreme Court ruling, Guantanamo was found to be violating the Geneva Conventions. In *Hamad v. Rumsfeld*, the Supreme Court ruled that the “government may capture and detain enemy combatants under the law of the war ‘to prevent captured individuals from returning to the field of battle and taking up arms’.” Additionally, the Geneva Conventions also gives a certain amount of due process rights to non criminals (Fletcher and Stover, 2009). The facility of Guantanamo has failed to grant these rights to the detainees; moreover, has been under accusation for mistreatment.

Interviews conducted with detainees have told stories of punishment and torture. Detainees have been shackled, held in stressful positions, exposed to extreme heat or cold, held in rooms with strobe lights and loud music blaring from speakers, sexually harassed and intimidated by female interrogation officers as well as international heads of government, and more. If this were not enough, they were punished for such “infractions” as making yogurt from the little food given to them, by being stripped of comfort items: praying mats or personal roles of toilet paper. Punishment also often included solitary confinement (Fletcher and Stover 42). The physical layout and conditions of the facility itself is also a subject that gives one pause. The detainees are housed in wire mesh cases in an

environment that gives the feel of living entirely outdoors. These individuals have been held here for years, some without any contact with their families or the outside world and many without being charged with any crime. The future for these detainees is uncertain in terms of being released or put on trial.

Elisa Massimo of Human Rights First has stated that by indefinitely holding these individuals, Guantanamo has served as a very powerful and effective recruiting tool for terrorist groups such as al-Qaeda. It has only hurt the United States' reputation and strengthened terrorism rather than combating the issue. By closing the facility the U.S. will be able to regain the strong relations it had with the European allies on intelligence and detention. The U.S. will also regain its leadership role concerning international opinion and other countries ("Prolonged Detention"). Once closed, the next question becomes: what to do with the detainees? In order to best serve justice and give closure to the victims' families, the detainees need to be put on trial in the federal court system. Torture, deprivation, and indefinite detainment are not principles that U.S. has based itself on and should not be something in which it should continue to engage in.

Purpose:

This thesis will present information that concludes that the events occurring at Guantanamo, and Guantanamo Bay itself, are illegal and violate international agreements. A legal foundation for the correct way to detain suspected terrorists will be laid by first examining the history of POW treatment and the original purpose of Guantanamo Bay. Secondly, this paper will take a further look into the actual treatment of the current detainees, physical layout of the camps, and military operations. Next, the legal justifications for the use of Guantanamo Bay are described. Finally, the creation and implementation of the Military Commissions and the failures of these practices will be outlined. As an

alternative the detainees should be brought to U.S. soil to await trial in the federal court system., which I will demonstrate can be quite effective in dealing with suspected terrorists.

Legal History and the History of POW Treatment:

Throughout U.S. history, there have been numerous conventions and treaties drafted during times of war concerning the treatment of Prisoners of War (POW). The Hague Conventions, which took place in 1899 and 1907, were among the first of international agreements outlining the laws of war and war crimes. These conventions, along with the numerous others that followed, such as the Geneva Conventions, defined the laws for holding a Prisoner of War (AP Hague, 2008). Once so defined, an individual is therefore entitled to the privileges of a POW. In the “Convention of July 1929, Relative to the Treatment of Prisoners of War” document, the first four articles are dedicated to the general provisions. These state that a POW must always be treated humanely, without torture or public scrutiny, and that they must be protected from violent acts. It further states that prisoners will maintain their civil status and honor. Articles five through eight provide guidelines for the capture and captivity of POWs to ensure their evacuation is done swiftly and they are held far from the line of battle. The remainder of the treaty outlines the required food, clothing, sanitation, and other needs of a POW that must be upheld by all ratified parties (AP Geneva, 2008).

The U.S. Office of Inspector General issued a report in 2009 outlining the Geneva Conventions as it pertains to torture and interrogations. The Geneva Conventions reads that individuals must be treated humanely and with dignity at all times while in detention. The provision known as “Common Article 3” prohibits cruel treatment, torture, and “in particular, humiliating and degrading treatment.” This provision also does not allow the use of any torture, including both physical and mental, or coercion to obtain information from individuals considered prisoners of war (DOJ, 2009: 54). The Geneva Conventions are documents that have been signed and ratified by the United States, which makes the

U.S. legally bound by them. In an exclusive to al-Jazeera, PBS states that once a country signs the document, “it agrees that all of those individuals under its control - military and civilian leaders, as well as soldiers in the field, in the air, and on the sea - are bound by the Conventions’ mandates” (PBS, 2008).

Joshua Decker, author in the Chicago Journal of Law, states that international humanitarian treaties and laws signed by the U.S., cannot be legally abandoned (Decker 2006). However, President Bush has decided that the al-Qaeda and Taliban detainees are not are guaranteed the rights under the international humanitarian law’s protection 3. While the agreeing countries are bound by these international laws, it is the domestic law that controls how that binding is enforced. Nevertheless, Decker asserts that the U.S. has violated the opinio juris prerequisite of customary international law. Opinio juris means that countries “comply with the norm against torture due to a legal obligation” (Decker, 2006). Put simply, just because these treaties are not put before domestic laws, does not mean that the United States should abuse or neglect them; they are still bound to uphold the treaties and international laws that are agreed upon.

Japanese-American Internment:

These conventions and laws described above have been used during times of war. A specific example of this occurred during the Second World War and the internment of Japanese individuals living in the United States. In the wake of the Pearl Harbor attack, to ensure that such acts would never happen again, President Roosevelt authorized this internment under the Executive Order 9066, which Congress ultimately upheld. These orders stated that individuals of Japanese descent were to be removed from the entire Pacific Coast. Those of Japanese descent were forced into “War Relocation Camps.” The camps were very similar to prisons with poor food, cramped spaces, and communal living. Work opportunities were offered to the detainees and many were recruited to be teachers in the

camps. Medicare and farmland were also provided in to those who were detained. Approximately 110,000 individuals were relocated and detained under this status; most of which were American citizens and were never found guilty of any cooperation with the enemy (APU 2001-2010). This example illustrates that detaining individuals presumed to be a threat to the U.S. has been defined as constitutionally and internationally legal. It would then seem acceptable to detain suspected terrorists after the September 11th attacks.

However, the reactions to the Japanese internment were mixed. The *West Seattle Herald*, ran an article entitled “Get ‘em Out!” This paper not only embraced the idea of Japanese Internment, but pushed for more aggressive actions against this population. Other papers, such as the *Argus*, stated how outrageous it was to see white “hoodlums” beating young Japanese Americans. The article further declared that Japanese Americans were entitled to the same rights and protections as other Americans. Also, the *Northwest Enterprise* acknowledged Japanese Americans as good citizens and asked people not to break laws and call it patriotism (Colasurdo, 2005). Just as there were mixed opinions about the Executive Order 9066, there are mixed opinions about whether or not to close Guantanamo Bay. While some have voiced their opinions in strong agreement with Guantanamo and claiming it is protecting our citizens, others have been advocating for it to close and relocate the detainees. In what follows, I identify the number of reasons for closing Guantanamo Bay.

History of Guantanamo Bay:

Guantanamo Bay was first acquired from Cuba by the U.S. in 1903 for use as coal station. Over time, families of those in service were living on this base. However, there were circumstances in which these families were evacuated from this base: the Cuban Missile Crisis in October 1962 and in February of 1964 Fidel Castro cut off the water supply to the base, again forcing U.S. citizens to evacuate. In May of 1994, Operation Sea Signal began and the base became home to the joint task force members to

provide humanitarian relief to the migrants of Haiti and Cuba. Within four months, the migrant population was over 45,000 and was expected to reach 60,000 migrants (Global Security).

From this point forward, the base was divided into two areas: the airfield and the main base. Guantanamo Bay's main function was to serve as the "strategic logistic base for the Navy's Atlantic Fleet and to support counter drug operations in the Caribbean" (Global Security). Today, the Bush Administration has turned this base into a facility that inhumanely treats its detainees. Its original purpose for use as a coal station, and later to provide humanitarian assistance to Haitian and Cuban migrants, has long been abandoned.

Justifications for Guantanamo:

To make the claim that Guantanamo must be closed, it is first important to review the claims of many who believe that it should be used as a detainment facility of suspected terrorists. NPR conducted an interview with attorney Bradford Berenson regarding why Guantanamo Bay remains in operation. Berenson served in the Bush White House counsel's office by writing policies on the capture and detainment of suspected terrorists. He believes that Guantanamo has become a symbol for the war on terror, one that people have come to object. Their problems are not with the facility itself, but with the alleged treatment of detainees and routine operations. However, he and others argue the main function of Guantanamo is to keep the American citizens safe, by housing suspected terrorists and preventing them from taking arms against the United States. Guantanamo Bay is a completely secure facility which prevents chances of detainee escape and keeps Americans safe, but remains close enough to allow access to attorneys, policy-makers, and journalists. The practices taking place there will still need to continue regardless of whether or not this particular base is closed. The suspected terrorists will still need to be housed in a secure location to prevent them from returning to arms and also to await some sort of sentencing trial. Also during this interview, former Secretary of Defense Donald

Rumsfeld stated that there has been valuable intelligence that has been provided by the detainees. This information has been used to save the lives of many Americans as well as the people of other countries (Inskeep, 2005).

Many fear that if these detainees were released, they would rejoin terrorists organizations and continue to pose a threat to the U.S. Pentagon spokesman Geoff Morrell revealed that 61 detainees that were released from Guantanamo have already taken up arms with terrorists in their home countries: 18 former detainees have been confirmed while 43 are still suspected (Reuters, 2009). Associated Press Writer, Kathy Gannon, also reports of two previous Guantanamo detainees who are now leaders for the Taliban. One, Abdul Qayyum, claimed he wanted nothing more but to return home and be with his family; he is now a senior leader in the Taliban. Another detainee, Rauf, is another officer for the same terrorist organization (Gannon, 2010). Even though this is only two instances of individuals returning to warfare, it is enough to invoke fear in the American people to advocate for the continual operations of Guantanamo.

Amnesty International reported that if Guantanamo did not detain these individuals, some other venue would be needed to house and interrogate suspected terrorists. They further argue that the Pentagon has already gone through great lengths to ensure that the necessary domestic and foreign agencies have access to this base. Closing the facility would only create more logistical challenges for those in charge to relocate all of these detainees onto a domestic holding facility. Moreover, the location change would have no legal significance to the U.S. If Guantanamo is closed and the detainees need to be housed in another location, they would not gain anymore rights than what they would have received in the military commissions (Amnesty International, 2005).

Military Commissions:

Although I discuss the failures of the Military Commissions in great detail below, it is important to note that there are legal procedures in place to try detainees. The current way of serving justice at Guantanamo Bay is by trying the detainees in under Military Commissions. These were created by the Bush Administration in November of 2001 as a way to try suspected terrorists. District Court Judge Arthur Raymond Randolph stated that this is a perfectly legitimate way to try enemy combatants because they are upheld by Congress. While some argue that they are in violation of the Geneva Conventions, Judge Rudolph believes that they do not interfere with an individual's rights because they are international treaties. Furthermore these conventions are between two countries at war and in these circumstances, the al-Qaeda is at war with the U.S., not a particular country (Hamdan v. Rumsfeld). I return to the topic of Military Commissions later when I discuss the ineffectiveness of this particular legal strategy.

Proposed Recommendations:

In this section, the multiple reasons to close Guantanamo Bay are presented. While there are acceptable reasons for the use of Guantanamo Bay, it would greatly benefit the United States' reputation and its citizens to cease operations at Guantanamo Bay and relocate the detainees to U.S. soil to await trial in the federal courts. The initial layout and treatment of the detainees is not only pushing the lines of humane treatment, but also violating internal laws and treaties. The Geneva Conventions Common Article 3 protects prisoners of war for torture, indefinite detention, and cruel treatment. The questionable day-to-day operations are discussed below showing the clear violation of this agreement.

Also, other countries have joined domestic protests against Guantanamo Bay. Until this facility is closed, these countries have since stated their unwillingness to assist the U.S. in a time of need. The

U.S. has long been viewed as the international leader on human rights. In order to maintain this influential and leadership position among the international community, the U.S. needs to take a proactive stance by closing Guantanamo. Additionally, while many believe that the U.S. is keeping Americans safer by detaining these individuals, Guantanamo has actually become the number one recruiting tool for terrorist organizations. It is the belief of many Muslim countries that those who are imprisoned are entitled to certain privileges and humane treatment. The longer Guantanamo remains open, the more followers terrorist organizations recruit who believe they are fighting for their fellow citizens' rights.

Once the facility is closed, the next recommendation is to transfer the detainees to Thompson prison in Illinois in order to be tried in the federal courts. This relocation will to a maximum security facility will not only reassure the world of the United States' upholding of international laws, but will also create many jobs in the state. This nearly empty prison will need security guards, cooks, and other prison staff stimulating the economy with new jobs. The U.S. currently holds hundreds of convicted terrorists on domestic soil and is more than capable of housing the detainees from Guantanamo Bay. Additionally, there has been much success in the federal court system of trying suspected terrorists. Over the years the domestic courts have convicted and imprisoned over 90% of all terrorist cases heard. These courts will ensure that fair justice is served while keeping these terrorists from returning to arms against the American citizens. Moreover, as I demonstrate empirically, they represent a significant improvement to the Military Commissions.

Why Guantanamo needs to be closed:

Layout and Treatment-

Guantanamo Bay first opened to hold suspected terrorists on January 11, 2002 under the Bush Administration and accumulated 700 detainees by 2003 (Fletcher and Stover, 2009: 42). The treatment

and housing of these individuals makes it impossible to believe that people could be held here indefinitely without being charged for any crimes or given a trial. It involves U.S. principle; what was originally constructed as a facility to keep suspected terrorists from harming U.S. civilians has become a torture zone that should no longer be in operation. From the very beginning, individuals were stripped of their rights and their dignity. Upon entering the facility, after being blindfolded and shackled during the transfer, detainees were fingerprinted, swabbed for DNA, stripped of all clothing in public spaces, and led to group showers where they were hosed down by military guards (Fletcher and Stover 41). After being given the regulatory orange jumpsuits, they were led to Camp X-ray. This facility was made up of 8'x6' wire-mesh cages connected by one long metal roof. Detainees have reported in interviews that these open cages gave them the feel of living outdoors. Small animals such as mice, snakes, scorpions, and tarantulas would come into their cells at all times of the day and night. When it rained, the detainees in the outermost cells would be drenched, as well as whatever items were in their cells. The few items that were given to the detainees were soap, a small bottle of shampoo, a bucket for water reportedly hard to drink from due to all of the chlorine), a towel, and a blanket. Along with these miserable cells, there is a wooden shack that serves as the interrogation room (Fletcher and Stover, 2009: 47). Just from the initial layout of the prison, it is evident how poor the conditions are.

The accounts that follow describe situations of torture, maltreatment, and humiliation as experienced by those who are detained at Guantanamo. This clearly demonstrates the violations of the Geneva Conventions, a treaty that the United States is under the obligation to uphold. While imprisoned, these detainees underwent countless interrogations for which there have been many accusations of torture, both mental and physical. In order to conduct questioning, Major General Geoffrey Miller organized a special interrogation team trained to research "psychological vulnerabilities, soft spots, and ways to manipulate detainees" (Fletcher and Stover, 2009: 44). Some detainees have

given reporters a better insight into what occurred during these interrogations. They state that female interrogators mocked and inappropriately touched, straddled and whispered into detainees' ears. Sexual humiliation was also undertaken by having women undress in front of a prisoner while other guards would get a good laugh at the detainee's expense. All of these practices are apparently allowed by military policies being labeled as "futility" and "mild non-injurious physical touching." Questioning and intimidation by foreign governments were also tactics used during interrogations of detainees. Many governments threatened detainees with imprisonment and even death if they ever returned home (Fletcher and Stover, 2009: 62-68). There have also been accounts of abusive treatment during these interrogations. These tactics include short shackling and holding individuals in stress positions; and environmental manipulation consisting of exposure to extreme temperatures, loud music and strobe lights. Despite legal wrangling, these acts clearly amount to torture.

Four detainees of Guantanamo, with the help of the American Civil Liberties Union, have filed charges against US Secretary of Defense Donald H. Rumsfeld for alleged torture. All four have filed charges of battery and sexual humiliation, having been stripped naked and photographed while suffering anal probing. One detainee, Mohannad Karim Shirullah, was beaten so harshly that his right eardrum ruptured resulting in permanent (right ear) deafness. In the same case, Said Nabi Siddiqi and other detainees suffered sleep deprivation due to stones being thrown at them during the night. Other detainees have reported having their heads forced underwater and tortured with electric shocks. They were also being deprived of medical attention until their cooperation is satisfactory to interrogators (Decker, 2006). These examples, along with the others presented in this section, show the blatant torture of detainees at Guantanamo.

Harmful Psychological/Physical Effects-

On top of all of these awful conditions, there have been many suicide and self mutilation attempts by inmates. The Department of Defense reported in 2006 that there were 460 suicide attempts. In 2003 a troubling 120 of those incidents were hanging attempts, 23 of which occurred within an eight day timeframe (Fletcher and Stover, 2009: 83). When these individuals are not being tortured or interrogated, they are turning to self inflicted harm as a way of escape. The Human Rights First publication, "In Pursuit of Justice," states that the U.S. Supreme Court upholds that "the purpose of military detention is not to punish the prisoner; it is to disable him from returning to fight" (Benjamin and Zabel 20). However, from all of indications, including the design layout, the operations, and treatment of the prisoners, it seems as though that is exactly what Guantanamo has become: a facility to punish prisoners.

Many of these treatments, I argue, violate reasonable standards. Human Rights Watch reports that under the International Covenant on Civil and Political Rights (ICCPR), which was adopted in 1966, requires that the U.S. treat all individuals held in custody with humanity and dignity. The human rights obligations also prohibit any "cruel, inhuman, or degrading treatment." Since international human rights law continues to apply during armed conflict, this is to be upheld whether or not the U.S. classifies and individual as an "enemy combatant." Due to warning from U.S. European Allies about the psychological effect from isolation, there have been some improvements since the opening in 2002. Some camps have allowed more free time for the detainees who do not pose disciplinary threat. Areas have been added outdoors for sports, games, and communal eating and prayer. Movies are even shown for entertainment at certain times. However, there are still other camps that are used as punishment units, confining detainees to their cells for 22 hours a day ("Locked Up Alone," 2008).

Lack of Possible Threat-

Many people would argue that these detainees are imprisoned for a reason, they are terrorists, and due to their actions and affiliations with terrorist organizations, should be subjected to these treatments. However, in the summer of 2002 a previously classified document was released stating that 200 of the 600 detainees had no affiliation to any terrorist organization. Major General Dunlavey went on record to say that an estimated half of the population should never have been housed at Guantanamo and a FBI counterterrorism expert reported only 50 worth holding (Fletcher and Stover, 2009: 84). These individuals have been housed in an abusive, isolated environment for the past eight years and hundreds of them should not even be detained, let alone tortured. Torture, deprivation, harassment, and the numerous other tactics being used at Guantanamo will not delegitimize terrorist organizations. Once this facility is closed, professional, legal investigations need to be conducted on an individual basis to see which detainees should remain in custody to await trial versus which ones can begin the release and repatriation process.

U.S. Allies-

By closing this facility, the United States will not only be upholding the ICCPR, we will also be gaining the support of many of our allies around the world; they will be more likely to come to America's aid when we need it. U.S. European allies have made clear that their willingness to increase counterterrorism cooperation depends on the closure of Guantanamo in a way that follows with the rule of law and respects human rights and fundamental freedoms. Also dependent on closing the facility is their offer to accept detainees who have been cleared for transfer but cannot be sent to their native countries. By choosing the alternative and allowing Guantanamo to remain in operation, the U.S. is compromising the relationships with other countries, as well as our broader international reputation.

The United States has always been held as a leader in the international community. At the first international Human Rights Summit (hosted February 17-19, 2010 by Human Rights First and Freedom house in Washington, DC) influential leaders from across the globe acknowledged the U.S. as being a supreme power with much international influence. Elisa Massimino stated that “the U.S. is and remains a model for other governments and a beacon for human rights defenders abroad; it must abide by its commitments to safeguard human rights” (Massimino, 2010). Closing this facility will only strengthen the reputation of the United States and the respect given to the U.S. from other countries.

Numerous nations have been extremely outspoken on their views on Guantanamo. Germany is just one country that strongly opposes keeping Guantanamo open. Chancellor Angela Merkel stated that this facility cannot and must not exist for much longer. Members of the British government, such as Tony Blair and Justice Lawrence Collins, have also called for the closure of Guantanamo. Justice Collins believes that America’s definition of torture does not coincide with Great Britain’s or other “civilized nations.” Similarly Baltasar Garzon, a prominent magistrate for terrorism crimes, stated that the U.S. is on the verge of committing crimes against humanity by leaving Guantanamo open (Greenberg, 2007). The acknowledgement of such opposition to Guantanamo was made clear in a speech given by Eric Holder. He stated that due to the international respect granted to the U.S. federal courts, allied country would be much more comfortable trying them on U.S. soil versus military commissions (Ambinder, 2010). Considering the lack of support of the allied nations, closing Guantanamo can only improve the U.S. respect in the international realm.

Additionally, our allies have been more than willing to accept detainees into their own countries. The Miami Herald reported recently that four more detainees were released to Slovakia and Switzerland. The individuals being released have all been interviewed by foreign governments and found to have no ties to terrorist organizations. One individual released by the Swiss, who has remained

nameless “for security and privacy reasons,” has agreed to learn French, obtain a job, and abide by all Swiss laws (Rosenburg, 2010). This is a prime example of the options to indefinite detention when federal trials on U.S. soil are not an option. There is no reason why Guantanamo should remain open with numerous alternatives available to our government.

Recruitment Tool for Terrorists:

Again, it is the housing of individuals at Guantanamo that is fueling the fire to more terrorist recruitment. A counterintelligence agent, who goes by the pseudonym Matthew Alexander to conceal his true identity, used personal experience to prove this point. He has conducted over 300 interrogations and supervised over 1000 interrogations. At a recent Human Rights First press briefing on January 20, 2010, he stated that through his interrogations he learned that the number one reason individuals join terrorists organizations is the detainment and torture of those at Guantanamo Bay (Alexander). While many fear that the U.S. will be subjected to more terrorists attacks by bringing these individuals here, the opposite may in fact be true. With Guantanamo no longer in operation, terrorist organizations have less of an incentive to mentally and physically threaten the U.S. Through his personal experience, Mathew Alexander explained how al-Qaeda believe that captors have a special obligation to treat their detainees as guests even though they are in fact prisoners. They therefore see Guantanamo as violating a strong cultural norm. Due to their strong beliefs to defend their country and their people, individuals have been joining terrorists groups to send a message about Guantanamo Bay (Alexander, 2010). By closing this facility and relocating these detainees to Thomson prison, we will be eliminating a powerful recruitment for terrorists.

The Aftermath of Closing Guantanamo:

Once the Guantanamo facility is closed the main issue becomes what our government should do with these detainees. Few possible options have been discussed to deal with this situation; these include repatriation with their native countries or relocation to a third country until establishments with the native governments can be arranged. The possibility of repatriation of these detainees is problematic from a political standpoint due to the alleged high rate of released detainees leading terrorist organizations. To please U.S. citizens, and to keep them safe, the option to house them in a third party country to await repatriation has also been suggested. However, it will be demonstrated that the best possible option is to relocate these detainees to U.S. soil. By doing this, our government takes one step closer to hearing these trials in the federal court system. As already mentioned, it also strengthens the U.S.'s reputation as a strong world leader.

Thompson Prison:

Thompson prison in Illinois has been a topic of much discussion regarding whether or not it can and should house the detainees from Guantanamo Bay. This has caused much controversy among government officials and citizens alike. In the next section the benefits and success of the federal courts will be highlighted; for now, it is crucial that once Guantanamo Bay is closed, the detainees that have not been cleared for repatriation should be transferred to Thomson to await trial in the federal court. Human Rights Watch stated in their report, "Locked up Alone," that the physical layout at Guantanamo Camps are very much like the super-max facilities in the U.S. In both locations, individuals are mainly held in single cells with a steel door and no windows for as much as 22 hours a day ("Locked Up Alone"). However, while housing conditions are similar, there are still countless benefits to moving detainees from Guantanamo to Thompson prison in the U.S.

Benefits of Thomson:

New York Times has named Thomson to be the best chance our government has at closing Guantanamo Bay (Savage, 2009). Governor Quinn from Chicago believes that this will not only benefit the economy, but public safety as well. There will be thousands of jobs created for the people of Illinois and will reduce the employment rate significantly. The tax payers of Illinois spent around \$120 million to build Thomson prison for it to remain basically empty. By holding suspected terrorists here until their trials, the Illinois government will be effectively using the money from its citizens. From a safety perspective, the outside of Thomson is surrounded by an electric fence holding 7000 volts along with more than 300 advanced technology security cameras around the complex (Savage, 2009).

Another benefit of Thomson is the treatment factor; while housed on U.S. soil there will be no more torture of the detainees since they will be treated like every other domestic inmate in the facility. Human Rights Watch notes that the possibility of harmful psychological effects and attempted self inflicted harm is reduced when the inmates are allowed recreational time outside of their cells ("Locked Up Alone," 2008). Inmates in the U.S. are allowed certain privileges to work outside of their cells as janitors, food servers; many also have free time to interact with each other. This can be in mess halls, sports yards, or just outside of their cells. Furthermore, many detainees at Guantanamo have not been in contact with their families and loved ones, who have no idea whether they are alive or dead. Their main interaction with other people comes when they are being interrogated or tortured by guards. Even inmates in the U.S. who have already been convicted of crimes as heinous as rape and murder are still allowed to talk to and see their family members; why should those suspected of crimes be any different? By transferring these detainees to a U.S. prison, they will still be housed the same as inmates in the U.S., but in a humane way that will not harm them psychologically or physically. As I described above from a security standpoint, the U.S. has long proved that it is capable of holding convicted felons

in the states; there is no reason to believe that the case will be any different for these suspected terrorists.

U.S. Ability to hold Terrorists-

Many find the idea of bringing suspected terrorists to our country unsettling and there is much fear of being attacked by terrorists groups. Republican Senate Minority Leader Mitch McConnell from Kentucky reported to the *Washington Independent* his opinions about the transfer and trial of detainees to U.S. soil. He was quoted saying that this is “a step backwards from the security of our country [that] puts Americans unnecessarily at risk” (Eviatar, 2009). Other officials, such as lawmakers and Illinois State Senator Matt Murphy, have agreed with this opposition of transfer to Thomson. At a recent state meeting, Senator Murphy compared this transfer to the “opening of Pandora’s box” which he believes once opened, can never be closed (Darin, 2010). Others fear that by bringing these suspected terrorists to our soil will only increase terrorist attacks against the U.S. This is not unlike the fear Americans had during WWII when emotions were mixed on the amount of German and Italian prisoners being held on U.S. soil. For those who lived only miles away from these POWs, there was continual fear of escape. However, there were also those who began to accept the situation. Many began to realized those prisoners helped to fix the severe labor shortage at that time by providing labor assistance (Marsh, 2007).

Additionally, the U.S. has held terrorists for almost fifteen years without any instances of escape or attack. There are currently 216 terrorists being held in prisons across the country, none of which has caused any disturbance to any of the nearby neighborhoods. Prisons in New York, Colorado, Indiana, and Illinois have all housed terrorists and those suspected of being terrorists; these individuals are very similar to the ones at Guantanamo (Benjamin and Zabel, 2009: 46-47). For those individuals who are

concerned for the safety of our citizens, there is no reason why the Guantanamo detainees should not be transferred to Thomson. History has shown that this country has and continues to efficiently house dangerous individuals without harm to innocent individuals.

The Benefits of the Federal Courts and the Failure of Military Commissions:

Federal Courts-

As demonstrated above, there has been much controversy over whether or not it is safe to bring Guantanamo detainees to the states to be tried in federal courts. There have been concerns of increased terrorist attacks, outbursts by the defendants in the courtroom, and the fear of where these suspected terrorists will live once they have served their time. Elisa Massimino, CEO of Human Rights First, stated at the recent HRF press briefing on January 20, 2010 that the U.S. has always been faced with disruptive defendants in the courtroom. She believes that we should not be intimidated to bring suspected terrorists into our courtrooms. Our system is not fragile, it is extremely resilient and by treating these cases as any other criminal case we will have the tools necessary to overcome them (Massimino, 2010). This country has placed serial killers, rapists, and criminally insane individuals on trial. None of these individuals, some of them the worst of the worst, were beyond control in our courtroom and there is no reason to think that the detainees from Guantanamo will be any different. Considering that these are very high profile cases, there is even more reason to expect a large amount security personnel present; both to see justice served for the loss of so many officers and also for security purposes.

Retired Vice Admiral Lee Gunn also spoke from professional experience at this briefing concerning the character of these terrorist groups. He passionately defined them as killers and thugs; not warriors as they so adamantly consider themselves. By holding their trials in federal courts, we will be dealing with them as though they were any other criminal and in doing so, diminish their credibility

(Gunn, 2010). These trials send a strong message because a terrorist's main goal is to cause fear and chaos within our government and society. Additionally, in an interview retired Brigadier General James P. Cullen adamantly pushed to have these terrorists tried on US soil. He notes that it has always been our justice system's tradition to bring suspects back to the scene of the crime for trial (Cullen). In the case of these terror trials, the United States is the only logical venue. The symbolism of this will not just bring what little closure a family can gain from seeing these terrorist put on trial, but will also send the message that our country will not be intimidated by criminals.

If the words of attorneys and retired military leaders are not enough, the following cold hard statistics prove the benefits of federal courts systems. By merely examining the cases tried in federal court systems, it is apparent that the U.S. can handle and administer long sentences to those proven guilty of terrorism. The tables below, taken from a Human Rights First publication "In Pursuit of Justice: Prosecuting Terrorism in the Federal Courts," shows remarkable success in such cases. Out of the 289 defendants of terrorism, 195 have been convicted of a criminal charge with only 73 still awaiting trial. That amounts to approximate 91% success rate. The medium length of sentencing for these criminals, which do not include life sentences, is almost 8.5 years (Tables 1 and 2- Benjamin and Zabel 9). Once the individuals have served their sentence, they are then deported back to their original country. "In Pursuit of Justice" also includes a list of the offenses charged. These include material support, which includes money, lodging, training, communications equipment, weapons, or assistance knowing that this will be used in connection to terrorist acts; IEEPA [International Emergency Economic Powers Act]; money laundering; weapons charge; false statements; conspiracy to commit murder; controlled substances; killing of U.S. national; and RICO [Racketeer Influenced and Corrupt Organizations] (Benjamin and Zabel 12). These statistics do not show a judicial system that is inefficient at convicting suspected terrorists; nor one afraid to put them away for many years. Rather, it demonstrates

determination and a strong stance against those who endanger our citizens while having tremendous success doing so.

Outcomes in Terrorism Cases, 9/12/2001-6/2/2009*

Defendants	289	
Charges still pending	73	
Charges resolved	214	
Convicted of any charge	195	91.121%
-Convicted at trial	67	31.308%
-Guilty Plea	128	59.813%
Acquitted of all charges or all charges dismissed	19	8.878%

Sentences Data from Terrorism Prosecutions, 9/21/2001-6/2/2009*

Total defendants sentenced	171
Defendants sentenced to imprisonment (excluding probation or time served)	151
Defendants receiving no additional prison time (i.e., probation or time served)	20
Defendants sentenced to a term of life imprisonment	11
Average term of imprisonment (excluding life sentences)	100.98 months (8.41 years)
Median term of imprisonment	58 months (4.83 years)
Median term of imprisonment, excluding defendants receiving no additional time	69 months (5.75 years)

It is also important to note the United States tries non U.S. citizens in the federal court system for crimes other than terrorism. Joshua Decker wrote in the Chicago Journal of Law that the United States can impose domestic laws on alien criminals. Under the Alien Tort Statue (ATS) the federal courts have jurisdiction to charge any offender who commits a violation of domestic law or a treaty of the United States (Decker, 2006). When it comes to dealing with non U.S. citizen criminals, the federal

courts have tried these cases under domestic laws. Thus, for suspected terrorists from Guantanamo, trying them in federal court would not be unprecedented.

Anthony D'Amato, a law professor at Northwestern University, has commented on the use of international law in the U.S. federal courts. He believes that and estimated 99% of cases heard in the U.S. hinge on the rules of international law. He further declares that in order to up hold legal responsibility to other nations, a country cannot enact its own laws without following international rule (D'Amato, 2001). This is not to say that international law overrules domestic laws; it is simply demonstrating the power of international law and its integration into domestic courts. Finally, this also is a way for the U.S. to weed out those detainees who are not considered dangerous from those who need to be imprisoned. By holding trials in the federal courts, it will be determined which detainees are worth holding to prevent their return to arms, and which pose no threat to the U.S. and can be released.

Military Commissions-

The alternative strategy, military commissions have not been successful thus far. They have been off to a rocky and unsuccessful start since the Bush Administration designed them in November of 2001. While on the surface it may appear sensible to try suspected war criminals in a military court, there are many problems with this system. Senator Russell Feingold, a Democrat from Wisconsin, shares his views on military commissions stating that they do not serve justice because they give individuals lesser rights and protections than our federal courts (Eviatar, 2009). Further complications involve the Supreme Court ruling that the Military Commissions Act of 2006 was unlawful and a violation of human rights. There is also the question of who can be tried and statistics demonstrate immense failure of the Military Commissions.

Lack of Fairness:

Amnesty International has a report written based on observations from inside one of the Military Commissions pre-trials that notes the lack of fairness in these proceedings. In one case, the

judge refused to hear from six expert witnesses on international and military law. The testimony from such experts would have been beneficial to the panel because Military Commissions are not given these instructions from the Department of Defense (Amnesty International, 2005). How can a trial be fairly conducted when pertinent laws are not being explained to the panel? Moreover, Deborah Colson, a Human Rights First attorney in the Law and Security Program, acknowledges that the rules for military commissions are in a sense made up as they go along. In these cases, whatever the presiding officers writes as a memorandum becomes the law. She explains that this is an officer who cannot even answer simple questions about what evidence can and cannot be introduced into trial, but is writing laws governing them. Individuals are being tried for sentences of life imprisonment, and sometimes death, under a system that does not have a clear set of rules to operate under (Colson "Trial Observations").

Colson also notes that during a military court hearing that "Military commission proceedings are transparent only when the government wants transparency, and remain shrouded in secrecy when the government does not." This is in specific regards to a document marked "For Official Use Only" that was leaked to the media. For one defendant, the document included information explaining that there were no eye witnesses to identify whether or not that defendant is guilty. The information was classified and was never supposed to be revealed in the courtroom until it accidentally appeared (Colson "Four Lessons"). It would seem as though the government had classified information in order to charge this man as a terrorist when in reality that information would acquit him of current charges. Colson also states that Military Commissions pay no attention to the ex post facto regulations and allow individuals to be charged with "crimes" that were not labeled as crimes when committed ("Four Lessons"). How can we allow this "system" to charge individuals with crimes when at the time of the incident the individual did nothing illegal? Or convict individuals without having all of the information on the case? Is this justice? The answer is a most resounding NO.

Where military commissions have most value is for the cases where there is not enough evidence to convict an individual. The Obama Administration recently announced that there are about 50 detainees who can not be prosecuted in the federal court systems due to lack of evidence. If these trials were conducted in the federal courts, it is highly likely that the defendants would challenge the use of evidence because it was obtained through coercion (Finn). This challenge could result in the dismissal of a case and the subsequent release of the accused. Knowing that previous military commissions have permitted coerced and uncertain testimony in cases, it would seem as though this would be a solution to the problem. The U.S. would be able to use what “evidence” it has to conduct a trial. However, what justice would this be serving? How will this decision look to other governments when these individuals may not deserve to be detained indefinitely? In cases such as these, it is necessary to explore alternatives to indefinite detention.

Military Commission Violations:

In the Human Rights First “Analysis of Proposed Rules for Military Commissions Trials,” it states that under the Military Commissions Act (MCA) 2006 coerced testimony and insufficient evidence can be allowed in these trials. Consequentially, the Military Commissions Act (MCA) 2006 document stated the following: “an alleged oral confession by the defendant can be introduced into evidence without corroboration; and the judge and jury may see testifying witnesses that the defendant and his counsel may not” (“Analysis- Military Commissions”). In many cases when an individual is being tortured and coerced into talking, they will give any information that they believe the interrogator wants to hear (Alexander, 2010). These testimonies cannot be labeled good intelligence nor should they be included in trials. The second provision also hurts the defendant’s case because it eliminates chance for any cross examination; a right explicitly stated under our federal court rules. All of these provisions seriously undermine those of our federal court systems.

Since implemented, there have been a number of Supreme Court Cases against President Bush ruling that the Military Commissions are a violation of human rights, are unconstitutional, and ignore the Geneva Convention: *Hamdan v. Rumsfeld*, which is discussed below, is one such case (New York Times, 2010). As a result of these cases, provisions were made in the MCA 2009. While the new act prohibited coerced testimony to be allowed in trials, it was still did not require due process as guaranteed by the Constitution. Due process gives the accused the right to consult with an attorney before answering any questions that could later be used in court. However, during an interview with interrogator Mathew Alexander, he stated that there is a certain amount of time that one can simply talk to a suspect without issuing the Miranda rights. During this time, the interrogator is allowed to explain the reasons why the suspect would benefit by talking freely without the presence of an attorney. However, if later this evidence wanted to be presented in federal courts, it would not be admissible (Alexander). The allowance of such testimony in military commissions compromises the outcomes in many cases. Such mistakes would not have been made in the federal court system.

Who can be Tried:

Aside from these violations of courtroom procedures and admissions of illegal evidence, another compelling reason to suspend military commissions is the definition of who can be tried in them. In order to be eligible, the Bush Administration stated that an individual must be labeled an “unlawful enemy combatant”. Also, under this new law, the defendant can be prosecuted in military commissions without having a single act of hostility against the US. Illustrating this is the trial of Yemini Salim Hamdan, which was described by reporter Andy Worthington to be complete “chaos and confusion.” Hamdan was charged with conspiracy and “providing material support for terrorism.” He was suspected of being a personal body guard of bin Laden but was never charged with hostile acts against the U.S. Another such example is the case against bin Laden’s driver, Ibrahim al-Qosi (Worthington). Here again the defendant was not accused of any hostile acts against the U.S. While it is true that these men were

labeled an “enemy combatant” by that Combatant Status Review Tribunal (“CSRT”), the report never specified whether they were “lawful” or “unlawful.” Due to this U.S. Navy Captain Keith J. Allred dismissed the charges for lack of jurisdiction (“Four Lessons”). Unless the definitions of “enemy combatant” are narrowed thousands of people, including civilians, could potentially be considered for military commissions without having any connection to armed conflict (“Analysis- Military Commissions”). Thus, it is incredibly difficult to use this system of justice when to begin with it is unclear who should and should not be on trial. By holding these proceedings in a federal court system, there is no need for the CSRT to make any evaluation; the individual on trail is a suspected criminal and will be tried as such.

Additionally, Amnesty International stated that military commissions are designed specifically for non U.S. citizens (Amnesty International). In a report by the American Bar Association on “Task Force Terrorism,” military commissions are noted as being very limited in utility because they can only try alien enemy combatants. This becomes very confusing when someone who violates are rule of war is also eligible to be tried for breaking a law of the United States. However, under the President’s orders, the ABA notes that the order applies a “reason to believe” status to determine who can be tired under military commissions. In some cases this may mean that a resident alien must forego certain rights and constitutional protections. One reason proposed for this unequal application of military commissions is the lack of a formal state of war. During *Ex part Quirin* in World War II, the Supreme Court did uphold the trial of a U.S. citizen by military commissions. However, when President Bush created the military commissions the U.S. was in no such state or war leaving U.S. citizens ineligible to be tried under this system (ABA, 2002).

When trying to pursue justice, it is troubling that our government would operate under two different systems: one system that unfairly treats non U.S. defendants and under another system that gives domestic defendants more rights. After all, what distinguishes the accused criminals we have on

U.S. soil from foreign accused criminals except native country? The truth is there is no difference: domestic criminals endanger and take American lives just as Guantanamo detainees have been accused of. Suspected terrorists are nothing more than hardened criminals and should be treated as such in our federal courts. Serving justice does not just come from granting rights to defendants, but also from granting rights to the victims. Justice and closure for the victims and their families comes from convicting and imprisoning the right person responsible. By holding trials in federal courts, we are making a statement that we are not imprisoning just anyone, but those who deserve to pay for their actions.

Failed Statistics:

In an article by Human Rights First, statistics also show the failures of military commissions. To date, only six individuals have qualified for trial and only three have been convicted. Of these three, two have already been released (Human Rights First). When compared to the success of the federal courts, these numbers are shocking. It is not right to advocate against bringing these individuals to U.S. soil and tried in the federal courts when clearly the only alternative is not successful. The cases that have been tried in these commissions were those that specifically targeted military personnel; such as the USS Cole Bomber and Major Nidal Malik Hassan, who shot 13 officers at a military base (Eviatar, 2009). Why then should terrorists, who targeted our society as a whole, not be subjected to our federal courts and our people? Military commissions have not brought any justice to the victims and families of the September 11th attacks and show no promise to do so in the future. Former New York Mayor Rudy Giuliani stated, "I think it shows you put terrorism on one side, you put our legal system on the other, and our legal system comes out ahead" (Sewer, 2009). While the Bush Administration was trying to "reinvent the wheel" with these military commissions, our government courts were operating well; rendering the military commissions useless (Sewer, 2009). The main goal of any court trial is to serve justice where justice is due. The military commissions have shown that they are not capable of achieving this goal.

Thus, the federal court system has an approximate 91% success rate in trying suspected terrorists; there is no reason for these detainees at Guantanamo not to be brought to the U.S. for trial.

Conclusion:

The reputation of the United States, the relationships with U.S. European Allies, correcting the violations of the Geneva Conventions, and upholding human rights are all reasons to close Guantanamo Bay and bring the trials of the detainees to the federal courts. By utilizing what Charles Lindblom has described as the branch or root method, the Obama Administration can start “building on the current situation, step by step and by small degrees” (Lindblom, 28). The first necessary step is to close Guantanamo Bay. Once the facility is closed the next appropriate step is to transfer these detainees into a U.S. supermax prison to await trial in the federal court systems. By holding the trials in the federal courts, it will not only bring closure to the victims’ families, it will also ensure a fair trial that serves justice.

The federal courts have convicted 195 terrorists since September 11, 2001 and continue to convict dangerous domestic criminals on a daily basis. There is no reason to believe that this court system would fail the U.S. when it is needed most. Military commissions, on the other hand, have convicted only three individuals; two of which have already been released from prison. For those who lack the evidence to be put on trial, these individuals need to be evaluated on a case by case basis to determine whether they can be repatriated to their home country, or become a citizen of a third party country. U.S. European allied countries have already begun accepting detainees into their own countries while others are still in negotiation. These are the same allied nations that have stated their unwillingness to assist the U.S. when needed unless Guantanamo is closed. They are doing everything they can to support the U.S. in order to ensure a quick closure of the facility.

The recent attempted terrorist attack was the Christmas Day plane bombing. The father of the young terrorist called the U.S. Government to turn his son over to the authorities in the attempt to

prevent this tragedy. Would this father have willingly turned his son over to a government that would be cruel to his son? A government that would torture, interrogate, and detain his son inhumanely? The answer is no! The United States has always been held as a leader in the international community. Other countries look to the U.S. to do the right thing, to abide by the Human Rights Constitution, and the Geneva Conventions. In order for the U.S. to maintain relationships with others who want to aid our efforts in ending terrorism and regain the high respect of the U.S. , Guantanamo Bay needs to be closed and the detainees need to be tried in the federal courts.

***Footnote:**

Tables “Outcomes in Terrorism Cases, 9/12/2001-6/2/2009” and “Sentences Data from Terrorism Prosecutions, 9/21/2001-6/2/2009” are taken from the Human Rights First publication “In Pursuit of Justice.” They are found on page 9 of this document and are respectively labeled Figure 7 and Figure 8.

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